

To: rogers, rick[rogers.rick@epa.gov]
From: Helms, Greg
Sent: Tue 7/1/2014 1:06:20 PM
Subject: RE: Charleston Gazette (7-1) Judge will consider EPA letter saying MCHM not 'hazardous waste'

Thanks Rick.

Gregory Helms
U.S. EPA
Waste Characterization Branch
Office of Solid Waste and Emergency Response
phone: 703-308-8845
fax: 703-308-0514
helms.greg@epa.gov

Address for regular/USPS mail:
1200 Pennsylvania Ave. NW
Mail Code 5304P
Washington, DC 20460

Address for overnight/hand delivery mail:
Two Potomac Yard
2733 S. Crystal Dr.
5th Floor; N-5611
Arlington, VA 22202

See OSWER's new LEAF leach test methods at:

http://epa.gov/wastes/hazard/testmethods/sw846/new_meth.htm

For an overview of hazardous waste regulation see the RCRA Orientation Manual, at:
www.epa.gov/epawaste/inforesources/pubs/orientat/

From: rogers, rick
Sent: Tuesday, July 01, 2014 8:46 AM
To: Ajl, Diane; Briggs-Steuteville, Sheila
Cc: Helms, Greg; Lewis, Jen; Fitz-James, Schatzi

Subject: FW: Charleston Gazette (7-1) Judge will consider EPA letter saying MCHM not 'hazardous waste'

FYI. The MCHM letter made its way to the court in WV.

From: Armstead, John A.

Sent: Tuesday, July 01, 2014 8:32 AM

To: rogers, rick

Cc: Libertz, Catherine

Subject: FW: Charleston Gazette (7-1) Judge will consider EPA letter saying MCHM not 'hazardous waste'

We are in it now...stay tuned

John A. Armstead, Director

Land and Chemicals Division (3LC00)

215-814-3100 (o)

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From: Seneca, Roy

Sent: Tuesday, July 01, 2014 7:59 AM

To: Armstead, John A.; Heron, Donna; White, Terri-A; Sternberg, David; Ferrell, Mark; damm, thomas; Capacasa, Jon; Smith, William (Region 3); Garvin, Shawn; Ryan, Daniel; Clarke, Tracy; Early, William; Mulkey, Marcia; frankel, michael

Subject: Charleston Gazette (7-1) Judge will consider EPA letter saying MCHM not 'hazardous

waste’

Judge will consider EPA letter saying MCHM not ‘hazardous waste’

By Ryan Quinn, Staff writer

A federal judge Monday granted a request by the operator of a Hurricane landfill, facing a lawsuit for accepting 228 tons of MCHM-contaminated wastewater mixed with sawdust, to consider a U.S. Environmental Protection Agency official’s letter saying the chemical isn’t a “hazardous waste.”

In the June 20 letter to Scott Mandirola, director of the Division of Water and Waste Management under the West Virginia Department of Environmental Protection, the EPA’s John A. Armstead wrote that he was responding to two questions Mandirola asked via email May 8 — three days after Hurricane and Putnam County filed a federal suit in West Virginia’s Southern District to force the Disposal Service landfill and its owner, Waste Management, to pay for removing the contaminated material.

The letter says Mandirola, who has told the Gazette that unburying the material and exposing it to the air again has more potential to cause problems than leaving it alone, asked Armstead whether the EPA considers Crude MCHM a hazardous waste when discarded and whether the EPA considers “remedial waste” containing Crude MCHM hazardous waste when discarded.

Armstead, director of the EPA’s Land and Chemicals Division, answered no to both inquiries.

“Remedial waste consisting of Crude MCHM mixed with debris and/or waste water would be a regulated hazardous waste only if such debris and/or waste water themselves met the regulatory definition of hazardous waste,” Armstead wrote. He continued to state that Crude MCHM alone is not considered a “hazardous waste” under the federal Resource Conservation and Recovery Act, or RCRA, when spilled or discarded.

DEP spokeswoman Kelley Gillenwater has said the material taken to the landfill was vacuumed up from the Freedom Industries site and the Elk River immediately after the Jan. 9 spill, which fouled the water of about 300,000 West Virginians. The material was originally taken to a tank at the Poca Blending site in Nitro that Freedom owned, before being taken to the landfill. After the landfill stopped accepting the material, the rest from the tank was shipped out of state.

The landfill has been arguing that MCHM is not considered a hazardous waste under the RCRA since it filed a motion on May 29 to dismiss the suit. Hurricane and Putnam County, who say they worry how the chemical’s presence in the landfill may affect residents, argue that the

landfill misunderstands the RCRA and add that the court “has the authority and responsibility to establish a toxicity standard under the state Hazardous Waste Management Act” for MCHM.

Disposal Service is saying the case should be thrown out before it goes to trial partly because the city and county didn’t give a 90-day notice of endangerment to the companies required under the RCRA before filing suit. They argue that notice is required, unless the chemicals deposited at the landfill are actually considered hazardous waste.

In a June 20 filing — just one in a back-and-forth over the motion to dismiss — the landfill argued that neither the DEP nor the EPA have chosen to regulate Crude MCHM as a hazardous waste, and stated that “Congress did not intend for the statutory definition of hazardous waste to be the basis for determining regulatory compliance under RCRA,” but rather wanted the EPA to make the call.

The landfill made a filing Friday asking Chief Judge Robert C. Chambers to consider the EPA letter, saying it wasn’t available June 20 but arguing it should be considered because of its “significance and import.” Chambers granted the request Monday and also directed the landfill to file a supplemental memorandum by July 7 explaining the weight the court should give the letter. He also ordered the city and county to file any response by July 14.

Monday was supposed to be the last day to file documents regarding any motions to dismiss the case, according to an order from Chambers. Chambers’ order does not indicate when he may rule on whether to dismiss the case.

- See more at:

<http://www.wvgazette.com/article/20140630/GZ01/140639954/1419#sthash.rYlHduC.dpuf>